

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION NO.2560 OF 2003

Moreshwar Bhalchandra Deshpande. ... Petitioner
v/s.
Government of India & ors. ... Respondents
Mr.V.S. Talkute for petitioner.
Mr.Anil Singh with Ms.Rutuja Ambekar for res.Nos.1
to 4.

**CORAM : H.L. GOKHALE &
J.H. BHATIA, JJ.**

DATED : 14th July 2006

ORAL JUDGMENT : (H.L. Gokhale, J.)

1. Heard the learned Counsel for the parties.

2. Rule. Rule made returnable forthwith. A reply has been filed by the Central Government. Respondents waive service.

3. The petitioner herein claims a pension for invalidation after a short service in the Armed Forces. Brief facts leading to the filing of this petition are stated as follows:-

. The petitioner joined as a Sepoy-Driver on 4th February 1981 after completion of his training and he was attached to the Armed Division at Udhampur in Jammu and Kashmir. There is no

dispute that when he joined the assessment of his health was in the medical category AYE which means that there was nothing wrong with him. It is his case that he was required to attend the duties in difficult terrains in Baramulla, Ladakh, Kargil, Kalsi, Pathankot and different places. In view of continuous driving in those circumstances, he developed some kind of psycho fear. He was hospitalized on occasions and finally for about ten times in six months prior to January 1985. Finally he was invalidated from his service and was discharged from 5th July 1985.

4. The petitioner made a representation for pension on account of invalidation. That was turned down. From the Annexures to the petition, it is seen that the last date for filing of an internal Appeal was 18th June 1986. It appears that it was not entertained. We have a letter dated 2nd April 1991 of the Zilla Sainik Welfare Office, Satara on record addressed to the Authorities at Bangalore. This letter states that the petitioner had applied for grant of disability pension and the request was made to check his record at an early date. On 13th August 1992, Sena Seva Corps Abhilekh had intimated him that the disability suffered by him was neither

attributable nor aggravated by military service and, therefore, his request was rejected.

5. It appears that the petitioner sent a legal Notice and thereafter filed a Writ Petition bearing No.6549 of 2000. A Division Bench of this Court consisting of B.P.Singh, C.J. (as he then was) and Bobade, J., by its order dated 19th December 2000, permitted the petitioner to file an Appeal to the Authorities of the Armed Forces. That Appeal was filed and came to be turned down on 1st May 2001. It is thereafter that the present Petition has been filed.

6. The principal submission of Mr.Talkute, learned Counsel appearing for the petitioner, is that it is not disputed that when the petitioner joined the Armed Forces he did not suffer from any disability. Under the relevant regulation of the Armed Forces being Regulation 173 of the Pension Regulations, 1961, if the disability of the member is not attributable at the time of joining in the Armed service, he is entitled to disability pension. Rule 173 reads as follows:-

" Unless otherwise specifically provided a disability pension may be granted to an

individual who is invalidated from service on account of disability which is attributable to or aggravated by military service and is assessed to 20 per cent or over."

7. Mr. Talkute submits that this regulation has been interpreted by different High Courts from time to time, including our High Court and a presumption has been drawn in favour of the member of the Armed Forces if his health was otherwise alright and certified to be not suffering from any disease at the time of joining the Armed service. In this behalf, he has relied upon a judgment of this Court in **Writ Petition No.3651 of 2000 (Kumkule V. Sambhaji vs. Govt. of India & ors.) decided on 13th October 2003**. That was a case of a member of the Armed Forces who worked in different army workshops from 1985 till he was discharged on 31st January 1994. The Court noted that at the time when the petitioner joined the service, he was examined and found fit. It is thereafter that while on patrolling duties during the Hindu-Muslim riots in Meerut that he suffered the seizure and he was hospitalized. What the Division Bench has observed in paragraph 3 of the judgment is relevant for our purpose and which

reads as follows:-

" Regulation of 173 of the Pension Regulations, 1961 provides that unless otherwise specifically provided a disability pension may be granted to individual who is invalidated from service on account of disability which is attributable to or aggravated by military service and is assessed to 20 per cent or over. The question whether a disability is attributable or aggravated by military service shall be determined under the rules in Appendix II. Rule 7(b) in this Appendix lays down : "a disease which has led to an individual's discharge or death will ordinarily be deemed to have arisen in service if no note of it was made at the time of individual's acceptance for military service. However, if medical opinion holds for reasons to be recorded that disease could not have been detected on medical examination prior to acceptance for service the disease will not be deemed to have arisen during service."

8. Mr.Talkute has drawn our attention to

various judgments of different High Courts viz. (1) in the case of Raj Kumar Sharma vs. Union of India (UOI) & ors. by a Single Judge of Madhya Pradesh High Court in Writ Petition No.1940 of 2000 decided on 24th September 2002, (2) a judgment of the Delhi High Court in the case of Subash Chander vs. Union of India & ors. in Writ Petition No.2054 of 1994 decided on 10th March 1995, (3) a judgment of the Punjab and Haryana High Court in the case of Union of India & ors. vs. Bodan Lal Yadav reported in 1994(1) S.L.R. 390 and (4) another Division Bench judgment of the Punjab and Haryana High Court in Writ Petition No.3150 of 2001 (Dhanpat Rai (Ex.Ptr) vs. Union of India (UOI) & ors. decided on 18th March 2002. In all these judgments a view is taken that if no note of disability is made at the time of entry in military service nor such disease is opined to be detectable at the time of entry in service, the petitioner would be entitled to disability pension. It is material to note that the pension payable is hardly 20% of the normal pension and Mr.Talkute states that as of now the petitioner will be getting perhaps an amount in the range of Rs.1250/- to Rs.1500/- per month.

9. Mr.Anil Singh, learned Counsel appearing

for respondent Nos.1 to 4, points out that the petitioner had rendered a service of hardly four years or so, out of which also he was on leave for 144 days. That apart he points out that there is a considerable delay on the part of the petitioner in taking necessary steps. His submission is that in view of this short service of the petitioner, the petitioner should not be given the benefit of such an enabling interpretation since it is possible that he may be suffering from some such problems even earlier. He submits that the decision of the Armed Forces should not be disputed.

10. We have noted the submissions of Mr. Anil Singh. If the petitioner was suffering from any such problem, he would not have served for the period of four years as a driver in difficult terrains in different various parts of Kashmir. The availing of leave on his part or being discontinued after a short period of four years by itself cannot be read against him. We are concerned with as to whether the petitioner should be denied this beneficial provision on any such grounds. We have noted that a number of High Courts, including our High Court have interpreted this rule for the benefit of the members of the

Armed Forces and rightly so. This is because if no particular ailment is noted at the time of joining in the Armed Forces, obviously it will have to be considered as something which is developed during the period of service and which will be attributable to his service unless again it is shown that it is something which has specifically nothing to do with the service in the Armed Forces. In the present case, the petitioner is specifically contending that due to his duties in difficult terrains, he developed a psycho fear. The fact remains that he has been treated for it before he was discharged. This being so, in our view, he should be entitled to the beneficial interpretation of Regulation 173 which has been given by different High Courts as well as our High Court from time to time. As far as the objection based on delay is concerned, in our view, it cannot survive in view of High Court's earlier order permitting the petitioner to file an internal Appeal. The present petition is filed within a reasonable time thereafter.

11. For the reasons stated above, we allow this petition and set aside the order dated 1st May 2001 passed by respondent No.4. The petitioner has sought pension at 40% in prayer

clause (b) but the respondents have assessed his disability at 20%. Mr. Talkute does not dispute the assessment made by the respondents. In the circumstances, we direct them to pay the petitioner pension for disability at 20% of the normal pension.

12. The respondents may calculate the arrears of pension by end of October 2006 and clear the petitioner's arrears and start paying him pension regularly from the month of November 2006.

13. Accordingly, Rule is made absolute as above. No order as to costs.

(H.L. GOKHALE, J.)

(J.H. BHATIA, J.)